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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952.

No. 86-Misc.

STANLEY J. ORLOFF,

Petitioner,

vs.

COLONEL REX E. WILLOUGHBY,
Commandant of Fort Lawton,
Seattle, Washington.

MOTION FOR LEAVE TO FILE BRIEF AND BRIEF *AMICI CURIAE*.

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Seattle, Washington.

Motion for Leave to File Brief as *Amici Curiae*.

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The undersigned, as counsel for the Committee To Prevent Abuse of The Doctors' Draft Act, respectfully moves this Honorable Court for permission to file the accompanying brief as *amici curiae*. Permission to file this brief has not been sought from the Solicitor General.

The Committee to Prevent Abuse of the Doctors' Draft Act came into existence when the facts in this case first came to the attention of members of the medical and dental professions. It is interested in the proper administration of the so-called "Doctors' Draft Law", 50 App. U. S. Code, sec. 454(i)(1).

The members of the committee are of the opinion that the exercise of a constitutional privilege should not deprive a doctor of his status and a commission. When he is drafted into military service as a private he cannot be discharged until his period of service has been completed. His status is not a voluntary one. He did not seek military service, the law compels him to serve, therefore he should not be penalized to the point where he is deprived of his qualification as a doctor and his right to a commission.

Wherefore, it is respectfully requested that this Honorable Court grant this motion for leave to file the annexed brief *amici curiae*.

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Supreme Court of the United States

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COLONEL REX E. WILLOUGHBY,
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Motion of Various Physicians and Dentists for Leave to File this Brief as Friends of the Court.

We, the undersigned physicians and dentists, through our attorney, Royal W. France, respectfully ask leave of the Court to file this brief as friends of the Court in support of the physicians above named.

Brief *Amici Curiae.*

It is with the deepest concern that the subscribing members of the medical and dental professions have learned of the decision of the United States Court of Appeals for the Ninth Circuit in this case. We are not so much concerned with the fate of Dr. Orloff as an individual for few, if any of us, know him personally. Neither do we concern ourselves with his political beliefs or memberships which may have led him to refuse to sign a required statement as to his connection in any manner with any of the listed organiza-

The case of the petitioner here clearly points up the danger to the professions and to the nation which has led the undersigned to subscribe to this brief. He is a trained psychiatrist and before induction held a most responsible position in a leading instiution for the mentally ill. The training for such work is long and arduous. The need for competent psychiatrists is great. Statistics show that more beds in American hospitals are given over to the mentally ill than to any other class of patients. There is a dire shortage of competent men in this field which does not attract many doctors to it. If such a man is drafted into the army and not used in his professional capacity there is a double loss. Not only do the armed forces and the civilians who are in need of his services lose them but another doctor has to be drafted into the Armed Forces to fill the place that he might occupy.

It is no answer to say that as a private he can use his skill, to a limited extent. Especially in his special field he is being wasted and his right to perform his professional function denied. Modern psychiatry is dependent on shock treatments and the administration of drugs and use of procedures which are denied to him. Moreover, in this field as much or more than in any other, the confidence of the patient in his doctor is of vital importance. Even if he were allowed, in a limited way, to treat patients the fact that he is a private when it is well known that doctors are entitled to commissions would seriously hamper his usefulness.

We believe that the intent of the "Doctors Draft Law" was to conserve medical manpower. The construction given to the law by the Court below wastes it. We do not believe that it was the intent of Congress to pass legislation discriminating against professionally trained doctors whose services are vital to national defense and national welfare.

The construction given to the law by the Court below discriminates in a way that endangers the security of all doctors. If one doctor can be drafted into the army as a private when he is beyond the usual draft age on the theory that he is a doctor and falls in to that special classification and then not used as a doctor with a commission to which he is entitled because of his classification, what doctor can feel secure in his own status? The present decision thus does more than visit an injustice on the individual before the Court. The impact will be felt by all those in the medical and dental services who are conscious of the dignity, rights and importance to the nation of their respective professions.

In these circumstances we, the undersigned,* affirm it to be our considered judgment that the case of the petitioner herein is one of vital national importance and that the decision below either incorrectly construes the "Doctors' Draft Law" or that the law is discriminatory and violates the Fifth Amendment to the Constitution of the United States. As members of the medical and dental professions we express the hope that the petition for Writ of Certiorari herein will be granted.

Respectfully submitted,

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tions designated by the Attorney General pursuant to Executive Order 9835. We do not consider these beliefs or memberships, whatever they may be, relevant. Whether a physician can serve properly in the armed forces in his professional capacity involves not his political beliefs but his professional competence. He is not a security risk in the sense, let us say, of an atomic scientist.

We are concerned, however, with what seems to be a frankly discriminatory and punitive interpretation of the draft laws as applied to doctors in this case. If the decision appealed from is allowed to stand not only will doctors not be given a preferred status as a result of their special skill and training but on the contrary will be subject to the draft far beyond the age fixed for non-professional people with no assurance whatever that their services will be utilized in their professional capacities. It is natural, therefore, that we are troubled at this threat to our professions as a whole.

At the time when the so-called "Doctor Draft Law" was pending before Congress, the representatives of our professional associations at the congressional hearings recognized that some exception had to be made in respect to the members of our professions from the rule that persons over the age of 26 could not be drafted. Few doctors would have been available below the age of 26 because of the long period of training required to qualify the members of these professions for their duties. As professional people, therefore, we were willing to accept the fact that we should be subject to service at a much later age than the ordinary draftee on assurance that we would be drafted only as needed and used in our professional capacities. Otherwise, we would have been placing ourselves in a position where we could be discriminated against by being drafted into the armed forces and still used in circumstances and for purposes for which our professional skills were not required

We were given such assurances at the hearings of the Committees both of the Senate and the House of Representatives.

The discriminatory nature of the legislation and the fact that in view of this discrimination care should be taken that doctors not absolutely essential should not be called up was recognized by Chairman Vinson in a statement to Dr. Walter B. Martin, in which he said:

> "There are no two ways in the world about that. *We should not put them in there just to be putting them in there to do something that has no direct bearing on the medical care of the men or their physical welfare*" (Emphasis supplied) House hearing, page 7193.

Similar assurances were given in the debates in Congress on the bill.

Apparently the Court below was troubled by the conclusion to which its logic led and the constitutional question that such obvious discrimination against doctors as allowing them to be drafted beyond the usual draft age, and tried to avoid it because Dr. Orloff has now been assigned to duties not "wholly outside the medical field." But this is illogical. If the Court below recognizes that the statute in authorizing a special draft of doctors beyond an age when others can be drafted can be justified only if, after induction, the doctor is utilized as such and that this limitation is inherent in the statute itself it follows then the Armed Forces are bound by the limitation. Putting a trained psychiatrist to work as a laboratory technician or as Judge Goodman put it "cleaning sponges or instruments in an operating room" or doing any other kind of work for which a civilian could be readily trained is not a utilization of his professional skill.

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